STATE OF MICHIGAN

COURT OF APPEALS

In re MEGAN MICHELLE POBANZ.

PEOPLE OF MICHIGAN,

Petitioner-Appellee,

v

MEGAN MICHELLE POBANZ,

Respondent,

and

LARRY POBANZ,

Appellant.

UNPUBLISHED
August 11, 2009

No. 290467
Huron Circuit Court
Family Division
LC No. 08-003778-DL

Before: Owens, P.J., and Talbot and Gleicher, JJ.

PER CURIAM.

Appellant appeals as of right from the trial court's order of disposition, placing his minor daughter, Megan Pobanz (DOB 7/29/93), under the supervision of the court and removing her from appellant's home. We affirm.

Appellant first argues that Referee Dan Quinn (a non-attorney) lacked the authority to sign the order for adjournment on September 15, 2008, and to conduct the preliminary hearing on October 1, 2008. Appellant also contends the referee improperly "rubber stamped" the October 2, 2008 order. As such, appellant asserts that the trial court had no jurisdiction over him or his daughter and its decision must be reversed.

Defendant failed to preserve this issue for review by raising it before the trial court. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994). Therefore, this Court's review is for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "Reversal is warranted only if the unpreserved error resulted in the conviction of an actually innocent defendant or where the error seriously affected the fairness, integrity, or public

reputation of the judicial proceedings." *People v Taylor*, 252 Mich App 519, 523; 652 NW2d 526 (2002).

MCL 712A.10 defines the scope of a referee's authority as follows:

> (1) Except as otherwise provided in subsection (2), the judge of probate may designate a probation officer or county agent to act as referee in taking the testimony of witnesses and hearing the statements of parties upon the hearing of petitions alleging that a child is within the provisions of this chapter, if there is no objection by parties in interest. The probation officer or county agent designated to act as referee shall do all of the following:
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> (a) Take and subscribe the oath of office provided by the constitution.
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> (b) Administer oaths and examine witnesses.
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> (c) If a case requires a hearing and the taking of testimony, make a written signed report to the judge of probate containing a summary of the testimony taken and a recommendation for the court's findings and disposition.
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> (2) If a child is before the court under section 2(a)(1) of this chapter, a probation officer or county agent who is not licensed to practice law in this state shall not be designated to act as a referee in any hearing for the child, except the preliminary inquiry or preliminary hearing. This subsection shall not apply to a probation officer or county agent who has been designated to act as a referee by the probate judge prior to January 1, 1988 and who is acting as a referee as of January 1, 1988.

Further, MCR 3.913 governs the type of hearings referees may conduct under the Juvenile Code, MCL 712A.1 *et seq*. MCR 3.913(A)(1) states that "the court may assign a referee to conduct a preliminary inquiry or to preside at a hearing other than those specified in MCR 3.912(A) and to make recommended findings and conclusions. Additionally, MCR 3.913(A)(2) provides, in pertinent part, as follows:

> (a) Delinquency Proceedings. Except as otherwise provided by MCL 712A.10, only a person licensed to practice law in Michigan may serve as a referee at a delinquency proceeding other than a preliminary inquiry or preliminary hearing, if the juvenile is before the court under MCL 712A.2(a)(1).
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> (c) Designated Cases. Only a referee licensed to practice law in Michigan may preside at a hearing to designate a case or to amend a petition to designate a case and to make recommended findings and conclusions.

Appellant first challenges the referee's authority to conduct the October 1, 2008 preliminary hearing. Under the plain language of MCL 712A.10(2) and MCR 3.913(A)(2)(a), a

non-attorney may conduct a preliminary hearing or preliminary inquiry. Therefore, we conclude that the referee was authorized to conduct the preliminary hearing. However, we do find error in the execution of the September 15, 2008 order of adjournment. While the September 15, 2008 order for adjournment was a scheduling order, and thus not a "substantive legal decision," *In re AMB*, 248 Mich App 144, 217; 640 NW2d 262 (2001), we have clearly stated that "the Legislature specifically denied referees the authority to enter orders, *no matter their substance*," *id.* (emphasis added). However, appellant is unable to show how his substantial rights were impacted by this non-dispositional error. Accordingly, reversal is not required.

Appellant also contends the October 2, 2008 order entered after a preliminary hearing is invalid because it was not reviewed by the trial court but, rather, "rubber stamped" by the referee. Similar to the circumstances in *In Re AMB*, the order in this case was executed with a stamped signature and there is record evidence that the referee referred to himself as the ultimate decision maker. *Id*. at 218. However, we do not find that any error in this regard affected appellant's substantial rights because the order was not a dispositional order of the court. Rather, the order merely indicated the existence of probable cause to believe that Megan committed the charged offense, authorized the petition, and scheduled the matter for a pretrial hearing. In addition, Megan pleaded guilty to the charged offense. Therefore, because the error did not result in the conviction of an innocent defendant or seriously affect the fairness, integrity, or public reputation of the judicial proceedings, reversal is not required. *Taylor*, *supra* at 523.

We also reject appellant's argument that it was error for the trial court to allow someone other than the prosecutor to act as the petitioner in this case. Because appellant also failed to properly preserve this issue for review, *Grant*, *supra* at 546, our review is for plain error affecting substantial rights, *Carines*, *supra* at 763.

Under MCL 712A.11(2) and MCR 3.914(B)(1), only the prosecuting attorney may file a petition requesting the court to take jurisdiction of a juvenile for having committed an offense that if committed by an adult would be a criminal offense. Appellant argues that it was error for the trial court to allow the state trooper who investigated the charged incident to act as the petitioner. Appellant provides no legal basis for this proposition. The statute and court rule only limit the filing of the petition to the prosecutor's office, but is silent regarding who can serve as a petitioner. While the officer was identified as the petitioner, it was Assistant Prosecuting Attorney Suzanne M. Krohn who actually filed the petition. Indeed, at the bottom of the form comprising the petition, it specifically denotes that Krohn "approved and authorized" the petition. Therefore, appellant's argument is without merit.

Appellant further contends that the trial court erred in ordering disposition in this case without fingerprinting Megan as required by statute, MCL 712A.18(10), and court rule, MCR 3.936. While we agree that the trial court erred in not following the statute and court rule, we conclude that its error does not require reversal.[1]

[1] Here, the order of disposition was entered on January 30, 2009. However, Megan was not fingerprinted until June 2009. See generally MCL 712A.18(10) and MCR 3.936.

While the trial court erred in failing to verify that Megan was fingerprinted before entering its dispositional order, this error does not require reversal. See MCR 2.613(A). Neither MCL 712A.18(10) nor MCR 3.936 set forth sanctions for violations of their directive. See *In re Jackson*, 199 Mich App 22, 28-29; 501 NW2d 182 (1993); *In re Kirkwood*, 187 Mich App 542, 545-546; 468 NW2d 280 (1991). Moreover, there is nothing to indicate that either appellant or Megan were prejudiced by the trial court's failure to fingerprint her before disposition. See *Moskalik v Dunn*, 392 Mich 583, 588; 221 NW2d 313 (1974).

Appellant also asserts that the trial court erred by assigning this case to Judge Clabuesch because Judge Knoblock had been the presiding judge over appellant's divorce case since 1994. In 1996, our Legislature reorganized Michigan's court system, creating a family division within the circuit court to handle most of the juvenile cases that were formerly given to the probate courts. MCL 600.1001; see also *In re AP & BJ*, 283 Mich App 574, ___; ___ NW2d ___ (Docket No. 286431, issued May 5, 2009), slip op, p 10. In accordance with the concept of "one judge, one family," MCL 600.1023 provides that where two or more matters involving the same family members are within the jurisdiction of the circuit court's family division, "those matters, whenever practicable, shall be assigned to the same judge whom the first case was assigned."

However, the statute is not absolute, indicating that the matters should be assigned to the first judge "*whenever practicable*." MCL 600.1023; see also *In re AP & BJ*, *supra*, slip op at 13 n 18. In the circumstances of this case, it would have been impracticable to assign these matters to Judge Knoblock, since all juvenile cases in Huron County are assigned to Judge Clabuesch pursuant to Administrative Order 2003-03. Further, the assignment was consistent with the Huron Circuit Court's family court plan. Accordingly, we conclude that the trial court did not err in assigning this case to Judge Clabuesch.

Finally, appellant argues that because the January 30, 2009, order of disposition was not signed by Judge Clabuesch it is invalid. Specifically, appellant contends that because the initials "CLG" are under Judge Clabeusch's signature, the court's recorder and clerk signed the order, not the judge. Contrary to appellant's assertion, there is no reason to believe that anyone other than Judge Clabuesch signed the dispositional order.

Affirmed.

/s/ Donald S. Owens
/s/ Michael J. Talbot
/s/ Elizabeth L. Gleicher